

DOCKET NO.: NNH-CV17-6072389-S	:	SUPERIOR COURT
	:	
ELIYAHU MIRLIS	:	J. D. OF NEW HAVEN
	:	
v.	:	AT NEW HAVEN
	:	
YESHIVA OF NEW HAVEN, INC.	:	NOVEMBER 8, 2017
FKA THE GAN, INC. FKA THE GAN	:	
SCHOOL, TIKVAH HIGH SCHOOL AND	:	
YESHIVA OF NEW HAVEN, INC.	:	

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Connecticut Practice Book § 17-44 et seq., the plaintiff, Eliyahu Mirlis (“Plaintiff”), hereby submits this memorandum of law in support of his Motion for Summary Judgment (the “Motion”) of even date herewith. Plaintiff is entitled to a judgment as a matter of law as to liability on his Complaint, dated July 19, 2017 (the “Complaint”) because there is no issue of material fact as to whether the judgment lien recorded against the defendant, Yeshiva of New Haven, Inc. fka The Gan, Inc. fka The Gan School, Tikvah High School and Yeshiva of New Haven, Inc.’s (“Defendant”), interest in the real property remains unpaid. The Motion, therefore, should be granted.

I. STATEMENT OF FACTS

On June 6, 2017, the United States District Court for the District of Connecticut entered a judgment (the “Judgment”) in favor of Plaintiff in the matter entitled Eliyahu Mirlis v. Daniel Greer et al., No. 3:16-cv-00678 (MPS), against Defendant and Daniel Greer in the amount of \$21,749,041.10. (Affidavit of Eliyahu Mirlis (“Mirlis Aff.”), ¶ 4 (attached hereto as **Exhibit A**); Judgment (attached hereto as **Exhibit B**.) The Judgment remains unsatisfied in full and there is presently due and owing Plaintiff \$21,749,041.10, exclusive of attorneys’ fees and costs expended in the collection of the Judgment. (Mirlis Aff., ¶¶ 5, 7.)

Defendant owns the real property situated in the City of New Haven, County of New Haven, and State of Connecticut known as 765 Elm Street, New Haven, Connecticut (the “Property”). (Complaint, ¶ 3; Answer, dated September 27, 2017, ¶ 3). On July 7, 2017, the Judgment being wholly unsatisfied, Plaintiff caused a certificate of judgment lien (the “Judgment Lien” attached hereto as Exhibit C) to be recorded in the Office of the City Clerk of said City of New Haven, Connecticut. (Mirlis Aff., ¶ 6.)

II. LEGAL STANDARD

Summary judgment shall be rendered “if the pleadings, affidavits and other proof submitted show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” Miller v. United Technologies Corp., 233 Conn. 732, 751 (1995). “The motion for summary judgment is designed to eliminate the delay and expense of litigating and issues where there is no real issue to be tried.” Wilson v. New Haven, 213 Conn. 277, 279 (1989). “In ruling on a motion for summary judgment, the court’s function is not to decide issues of material fact, but rather to determine whether such issues exist.” Nolan v. Borkowski, 206 Conn. 495, 500 (1998). “The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law.” Tarzia v. Great Atlantic & Pacific Tea Co., 52 Conn. App. 136, 145 (1999). “[T]he party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact. . . .” Id. (citing Foy v. Mucci, 238 Conn. 800, 805-806 (1996)).

III. LAW AND ARGUMENT

There is no issue of material fact as to Defendant's liability to Plaintiff for the unpaid amount of the Judgment. Therefore, Plaintiff is entitled to judgment as to liability on his Complaint as a matter of law.

In a foreclosure action, "to make out its prima facie case, [the foreclosing party] had to prove by a preponderance of the evidence that it was the owner of the note and mortgage and that [the mortgagee] had defaulted on the note." Franklin Credit Mgmt. Corp. v. Nicholas, 73 Conn. App. 830, 838 (2002). Conn. Gen. Stat. § 52-380a(c) provides in relevant part, "A judgment lien on real property may be foreclosed or redeemed in the same manner as mortgages on the same property." ". . . [I]n the same manner as mortgages, refers to the general nature of the suit. . . . It has no reference to the rules of evidence or the burden of proof." Hartford v. Poindexter, 84 Conn. 121, 133 (1911) (interpreting former Section 49-46). Thus, in an action to foreclose a judgment lien a plaintiff must prove that he has a valid judgment lien and that the judgment has not been satisfied. See Conn. Nat'l Bank v. Browder, 30 Conn. App. 776, 780 (1993) (upholding foreclosure judgment where existence of lien proven and judgment unsatisfied).

Here, Plaintiff properly recorded the Judgment Lien against the Property. There is no issue of material fact that Defendant owns the Property and that the Judgment remains unsatisfied in full. Thus, there is no material issue of fact as to Plaintiff's prima facie case seeking foreclosure of the Judgment Lien, and the Court should enter judgment as to liability in favor of Plaintiff as a matter of law.

IV. CONCLUSION

Plaintiff respectfully requests that the Court enter an order granting summary judgment in his favor as to liability in this foreclosure action and granting such other and further relief as justice requires.

THE PLAINTIFF
ELIYAHU MIRLIS

By: /s/ John L. Cesaroni
John L. Cesaroni
ZEISLER & ZEISLER, P.C.
10 Middle Street
15th Floor
Bridgeport, Connecticut 06604
(203) 368-4234
jcesaroni@zeislaw.com
His Attorneys

CERTIFICATE OF SERVICE

This is to certify that today a copy of the foregoing Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment was sent to all appearing parties and counsel of record as follows via electronic mail:

Jeffrey M. Sklarz
Lauren McNair
Green & Sklarz LLC
700 State Street
Suite 100
New Haven, CT 06511
jsklarz@gs-lawfirm.com
lmcnair@gs-lawfirm.com

/s/ John L. Cesaroni
John L. Cesaroni

EXHIBIT A

EXHIBIT A

DOCKET NO.: NNH-CV17-6072389-S	:	SUPERIOR COURT
	:	
ELIYAHU MIRLIS	:	J. D. OF NEW HAVEN
	:	
v.	:	AT NEW HAVEN
	:	november 3
YESHIVA OF NEW HAVEN, INC.	:	OCTOBER 3, 2017
FKA THE GAN, INC. FKA THE GAN	:	
SCHOOL, TIKVAH HIGH SCHOOL AND	:	
YESHIVA OF NEW HAVEN, INC.	:	

AFFIDAVIT OF ELIYAHU MIRLIS

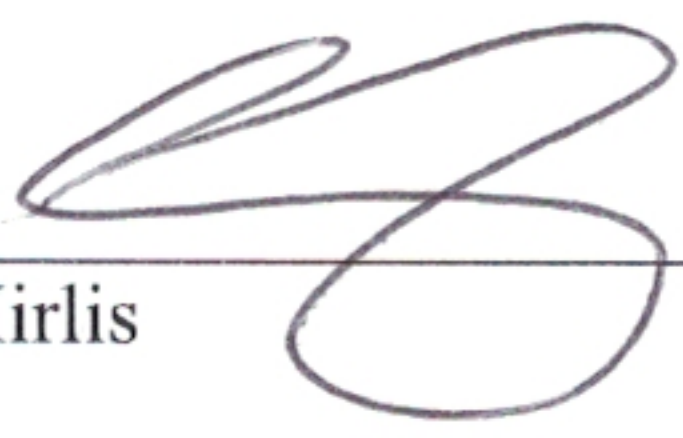
STATE OF ~~NEW JERSEY~~ connecticut)
COUNTY OF Fairfield) ss. Sathpart

Personally appeared **Eliyahu Mirlis**, who being duly sworn, does depose and say:

1. I am over the age of 18 years and believe in the obligation of an oath.
2. I am the plaintiff in the above-captioned action, and the judgment creditor in the matter entitled Eliyahu Mirlis v. Daniel Greer et al., No. 3:16-cv-00678 (MPS) (the "District Court Action"), brought in the United States District Court for the District of Connecticut. As such, I have personal knowledge of the facts alleged herein based upon my participation in these actions and a review of my records.
3. I make this affidavit in support of Plaintiff's Motion for Summary Judgment filed concurrently herewith.
4. On June 6, 2017, the United States District Court for the District of Connecticut entered a judgment (the "Judgment") in my favor in the District Court Action against the defendant, Yeshiva of New Haven, Inc. fka The Gan, Inc. fka The Gan School, Tikvah High School and Yeshiva of New Haven, Inc. ("Defendant"), and Daniel Greer in the amount of \$21,749,041.10.
5. The Judgment remains unsatisfied in full and there is presently due and owing to me the amount of \$21,749,041.10.

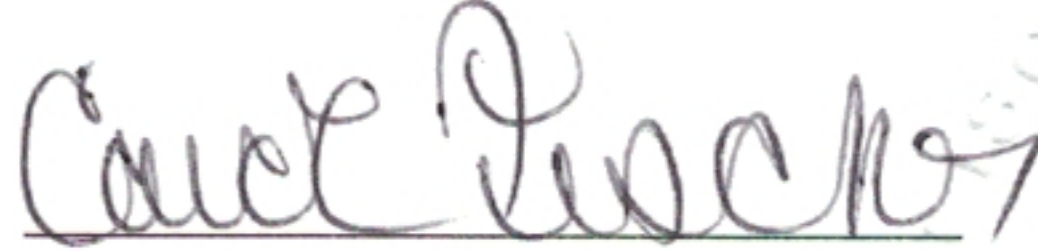
6. On July 7, 2017, the Judgment being wholly unsatisfied, I, through my counsel, caused a certificate of judgment lien to be recorded in the Office of the City Clerk of the City of New Haven, Connecticut encumbering Defendant's interest in the property known as 765 Elm Street, New Haven, Connecticut.

7. I have incurred attorneys' fees and costs in in the collection of the Judgment and reasonably believe that I will continue to incur such fees and costs.



Eliyahu Mirlis

Subscribed and sworn to before me this 2nd day of ~~October~~, 2017. November, 2017



Notary Public/
~~Commissioner of Superior Court~~

Carol Fischer
Notary Public
My Commission Expires 08/31/2018

EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ELIYAHU MIRLIS

v.

CASE NO. 3:16CV678(MPS)

DANIEL GREER, *Rabbi*
YESHIVA of NEW HAVEN, INC.
GAN SCHOOL, INC.
F.O.H., INC.
EDGEWOOD VILLAGE, INC.
EDGEWOOD ELM VILLAGE, INC.

JUDGMENT

This action came before the court for a trial by jury before the Honorable Michael P. Shea, United States District Judge. On May 18, 2017, after deliberation, the jury returned a verdict in favor of the plaintiff, Eliyahu Mirlis, awarding \$15,000,000 in compensatory damages and finding that punitive damages should be awarded for the plaintiff's recklessness, intentional infliction of emotional distress, and assault and battery claims. The Court, having considered the applicable law and having reviewed plaintiff's submissions concerning punitive damages and offer-of-compromise interest, awards common law punitive damages in the amount of \$5,000,000 and offer-of-compromise interest in the amount of \$1,749,041.10.

Further, on April 12, 2017 the defendants Gan School, FOH, Inc., Edgewood Village, Inc., and Edgewood Elm Village, Inc. were dismissed in the amended complaint; it is therefore

ORDERED, ADJUDGED and DECREED that the judgment is entered in favor of the plaintiff and against Daniel Greer and Yeshiva of New Haven, Inc. in the amount of \$15,000,000 in compensatory

damages, \$5,000,000 in common law punitive damages, and \$1,749,041.10 in offer-of-compromise interest as of June 6, 2017, for a total of \$21,749,041.10.

Dated at Hartford, Connecticut, June 6, 2017.

ROBIN D. TABORA, Clerk

By /s/
Devorah Johnson
Deputy Clerk

EOD 6/6/17

EXHIBIT C

UNITED STATES DISTRICT
DISTRICT OF CONNECTICUT

ELIYAHU MIRLIS,

Plaintiff,

No. 3:16-cv-00678 (MPS)

v.

DANIEL GREER, ET AL.

Defendants.

CERTIFICATE OF JUDGMENT LIEN

This is to certify that on June 6, 2017, the United States District Court for the District of Connecticut entered a judgment in favor of the Plaintiff/Judgment Creditor, **Eliyahu Mirlis**, in the matter entitled Eliyahu Mirlis v. Daniel Greer et al., No. 3:16-cv-00678 (MPS), against the Defendant/Judgment Debtor, **Yeshiva of New Haven, Inc. fka The Gan, Inc. fka The Gan School, Tikvah High School and Yeshiva of New Haven, Inc.**

The Judgment Creditor, **Eliyahu Mirlis**, is an individual with an address of 5 Barlow Road, Edison, New Jersey 08817. The Judgment Debtor, **Yeshiva of New Haven, Inc. fka The Gan, Inc. fka The Gan School, Tikvah High School and Yeshiva of New Haven, Inc.**, is a Connecticut corporation with a last known address of 765 Elm Street, New Haven, Connecticut 06511.

The judgment obtained by the Plaintiff/Judgment Creditor was in the amount of **Twenty-One Million Seven-Hundred Forty-Nine Thousand Forty-One Dollars and Ten Cents (\$21,749,041.10)**, as of June 6, 2017. No amount of the judgment obtained by the Plaintiff/Judgment Creditor against the Defendant/Judgment Debtor has been paid to date, and the entire amount is due thereon.

The title interest of the Defendant/Judgment Debtor, **Yeshiva of New Haven, Inc. fka The Gan, Inc. fka The Gan School, Tikvah High School and Yeshiva of New Haven, Inc.**, in the real property known as 765 Elm Street, New Haven, Connecticut (and more particularly bounded and described as shown on **Schedule A** attached hereto) is the real property on which this Certificate of Judgment Lien is being placed. A lien for the amount of the Plaintiff's/Judgment Creditor's judgment is hereby placed on such real property interest of said Defendant/Judgment Debtor, **Yeshiva of New Haven, Inc. fka The Gan, Inc. fka The Gan School, Tikvah High School and Yeshiva of New Haven, Inc.**

JUDGMENT CREDITOR,
ELIYAHU MIRLIS

By: 

John L. Cesaroni, Esq. (ct29309)
Zeisler & Zeisler PC
10 Middle Street, 15th Floor
Bridgeport, CT 06604
(203)388-4234
jcesaroni@zeislaw.com
His Attorneys

A copy of said Judgment Lien has been mailed by First Class Mail, postage prepaid, to Yeshiva of New Haven, Inc. fka The Gan, Inc. fka The Gan School, Tikvah High School and Yeshiva of New Haven, Inc. this 6th day of July, 2017.

Received for Record _____ at _____ M. Attest _____
Town Clerk

SCHEDULE A TO JUDGMENT LIEN CERTIFICATE

LEGAL DESCRIPTION

ALL THOSE CERTAIN pieces or parcels of land, together with all buildings and improvements thereon standing, in the City of New Haven, County of New Haven and State of Connecticut, being described as follows:

First Piece

Easterly by Norton Street 170 feet,
Southerly by Elm Street 150 feet,
Westerly by land of the Estate of J.B. Wheat deceased,
152-8/10th feet,
Northerly by land of said estate 143-1/10th feet

Second Piece, being in the rear of the premises known as #220 and #222 Norton Street

East by land now or formerly of Helen E. Gilman, forty-nine and seven-tenths feet, being a straight line from a point in the South line of land now or formerly belonging to said Helen E. Gilman, one hundred and twenty-three and one-tenth feet from the Westerly line of Norton Street to a point in the North line of land now or formerly of said Helen E. Gilman, one hundred and twenty-one and eight-tenths feet from the Westerly line of Norton Street;

South in part by land now or formerly of the Board of Education of New Haven, as Trustee, for the City of New Haven School District, twenty feet, more or less, in part by land now or formerly of Ernest F. Moeller, forty-three and one-tenths feet, more or less; and in part by land now or formerly of Anna A. Clancey and Thomas A. Clancey, forty-one feet, more or less;

West by land now or formerly of John F. Kehoe, et al, one foot, more or less;

South again by land now or formerly of John F. Kehoe, et al, thirty-one and three-tenths feet, more or less;

West again in part by land now or formerly of Hans P.L. Hansen, forty-four feet, more or less, and in part by land now or formerly of Frank Pandajis forty-five feet, more or less;

North by land now or formerly of Lizzie Lubenow and August Lubenow, fifty-six feet, more or less;

East again by land now or formerly of Mary Downs and Julia C. Thomas, twenty-nine and five-tenths feet, more or less;

North again by land now or formerly of Mary Downs and Julia C. Thomas, seventy-nine and eight-tenths feet, more or less.

LEGAL DESCRIPTION
(CONTINUED)

Third Piece, known as 220-222 Norton Street

East by Norton Street, 35 feet, more or less;

North by land now or formerly of William W. Thomas,
121-8/10th feet;

West by land now or formerly of the Board of Education
of the City of New Haven as Trustee for the New Haven
City School District, 49-7/10th feet;

South by land now or formerly of the Board of Education
of the City of New Haven as Trustee for the New Haven
School District, 123-1/10th feet.

Fourth Piece, known as 224 Norton Street

Easterly by Norton Street, 80 feet, more or less;

Southerly by land now or formerly of Mrs. Edward Gilman
in part, and in part by land now or formerly of Jerome
B. Wheat, in all, 200 feet, more or less;

Westerly by land now or formerly of Jerome B. Wheat, 80
feet, more or less;

Northerly by land now or formerly of Jerome B. Wheat,
in part and in part by land now or formerly of Ada T.
Somers, in all, 200 feet, more or less.

TOGETHER WITH such rights, benefits, privileges, agreements and/or easements as may be set forth in that certain Agreement for Exchange of Easements dated December 17, 1991 and recorded in Volume 4441 at Page 72 of the New Haven Land Records.